



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-180115

January 23, 1974

403/e 8

Mr. Hilton W. Howard
1409 Springdale Drive
Jackson, Mississippi 39211

Dear Mr. Howard:

Further reference is made to your letter of October 9, 1973, appealing a denial of your claim for \$54.73 by our Transportation and Claims Division. You have requested that your claim be considered as a meritorious claim under the Meritorious Claims Act of 1928, 31 U.S.C. 236.

The facts pertinent to your claim may be summarized as follows:

You shipped 12,100 pounds of household goods incident to your change of station from Atlanta, Georgia, to Jackson, Mississippi, as an employee of the Department of Housing and Urban Development (HUD). You were authorized shipment of 11,000 pounds net weight. The applicable regulations, Office of Management and Budget Circular No. A-56, provides in section 6.2b(1) that when household goods are shipped uncrated, as in this case, the actual weight, including containers and packing materials, shall be considered the net weight. Since the actual (net) weight of your shipment, 12,100 pounds, exceeded your allowable net weight, 11,000 pounds, you were charged \$54.73 for the excess.

Your reclaim of the excess charge is based on the fact that the provision in Circular No. A-56 that the actual weight of uncrated goods is to be the net weight of those goods was erroneously omitted from HUD Handbook 2300.2A, "Travel." You state that you were provided the HUD Handbook prior to shipment of your goods, that you were told that it governed your entitlements, and therefore the Government is contractually obligated to its provisions. Section 52a(2), Determining net weight, of HUD Handbook 2300.2A contains directions for determining the net weight only of crated goods or those packed in special containers, providing an allowance for the weight of the containers. You state that if an allowance is made for the weight of packing and containers, as is provided for crated goods or those packed in special containers, your shipment would not be in excess of the 11,000 pound limit.

[Request for Consideration as a Meritorious Claim]

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Regarding transportation of household goods, section 48 of HUD Handbook 2300.2A states specifically that:

"The allowances and expenses are precisely defined in Bureau of the Budget (now Office of Management and Budget) Circular No. A-56. All provisions of this Circular are applicable without modification except as set forth in subsequent parts of this Handbook."

The provisions of Circular No. A-56 regarding shipment of uncrated household goods are not modified in subsequent portions of the HUD Handbook. While section 52a(2) of the HUD Handbook does not discuss uncrated shipments, section 45 refers the employee to Appendix 6, which states in pertinent part:

"The maximum net weight of household goods that may be transported or stored at Government expense may not exceed 11,000 pounds for employees with immediate families and 5,000 pounds for employees without immediate families. All net weights must be actual and not estimated. When such goods and effects are transported uncrated, the actual weight of such goods and effects, including containers and packing materials, shall be considered as the net weight for the purpose of applying the net weight limitations."

You state that your Area Counsel is of the opinion that in equity and law you are entitled to reimbursement for the excess costs. We understand that this opinion was based on your allegation that you were entitled to reimbursement under regulations in effect at the time of shipment, and that those regulations were subsequently amended and applied retroactively. This conclusion is contrary to the facts as reflected in the record before us. We further note that at no time in your extensive correspondence concerning this claim have you alleged that the same household goods would not have been shipped had you been fully aware of the applicable regulation.

The Meritorious Claims Act of 1928, 31 U.S.C. 236, provides that when a claim is filed in this Office that may not be lawfully adjusted by use of an appropriation, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, it shall be submitted to the Congress with our recommendations. This remedy is an extraordinary one and its

use is limited to extraordinary circumstances. The cases which we have reported to Congress have generally involved circumstances of an unusual nature which are unlikely to present a recurring problem since to report to Congress a particular case, where similar equities exist or are likely to arise with respect to other claimants, would constitute preferential treatment over others in similar circumstances.

It has often been urged that where the claimant had been given erroneous information, that fact by itself should be regarded as sufficient justification for the payment of the claim. However, it is well established that the Government, which may act only through its agents, is liable only to the extent that its agents act within the scope of statutes and regulations pursuant to statutes. Therefore, the allegedly misleading character of HUD Handbook 2300.2A does not afford a legal basis for payment of this claim and since numerous employees have been provided the Handbook incident to transfer, we do not find that your claim contains elements of equity of an unusual nature.

Accordingly, we are of the opinion that this claim does not contain such elements of legal liability or equity as would warrant reporting it to the Congress under the Meritorious Claims Act of 1928.

Sincerely yours,

H. F. Kellor

Deputy Comptroller General
of the United States